

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 8 2005

**D045770        People v. Malone**

The judgment is affirmed. Benke, J., We Concur: McConnell, P.J., Huffman, J.

**D046910        Roel Construction Co. Inc., et al. v. Superior Court of San Diego County/900 F Street Partners**

The petition is denied.

**D046640        Johnny R. et al., v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

No timely petition for writ relief has been filed. The notice of intent as to Johnny R. is deemed to be abandoned. The case is dismissed.

**D045124        People v. Morgan**

We reverse the true finding that a North Carolina conviction for breaking and entering qualifies as a prior strike under California law, and direct the trial court to amend the abstract of judgment accordingly. In all other respects, the judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Haller, J.

**D045023        People v. Morgan**

We reverse the true finding that a North Carolina conviction for breaking and entering qualifies as a prior strike under California law and direct the trial court to amend the abstract of judgment accordingly. In all other respects, the judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Haller, J.

**D044569        Toyo De Baja California, Inc. v. Toyo Tire & Rubber Co. et al.**

The petition for rehearing is denied.

**D045768        People v. Sandberg**

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

**D046692        National Steel and Shipbuilding Company v. Superior Court of San Diego County/Godinez et al.**

For good cause shown, the Superior Court of San Diego County is ordered to show cause why the relief requested should not be granted. Respondents may file a return to the order to show cause on or before August 26, 2005. Petitioner may file a reply on or before September 14, 2005. Absent a written request on or before September 19, 2005, oral argument will be deemed waived.

All trial court proceedings are stayed pending further order of this court.

**D046771        Pardee Homes v. Superior Court of San Diego County/Brookview Square Unit 1 Community Association et al.**

The petition is denied.

**D046720        In re Gilmore on Habeas Corpus**

The petition is denied.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 8 2005 (Continued)

Present: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion  
Clerk: D. Moore

**D045236        Corelis v. Tri-City Medical Center**

Cause called on merits. Howard Bennett Hellen, Esq. argued for appellant. Kenneth J. Medel, Esq. argued for respondent. Cause submitted.

Court recessed at 9:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion  
Clerk: D. Moore

**D044838        People v. Cantrell**

Cause called on merits. Rebecca P. Jones, Esq. argued for appellant. Audrey Jing, Certified Law Student from Attorney General's office, argued for respondent. Ms. Jones replied. Cause submitted.

Court recessed at 1:48 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

**D045268        Kolender v. San Diego County Civil Service Commission/Berry-RPI**

Cause called on merits. Robert Paul Faigin, Esq. argued for appellant. Everett L. Bobbitt, Esq. argued for respondent. Mr. Faigin replied. Cause submitted.

**D045266        Kolender v. San Diego County Civil Service Commission/Salenko-RPI**

Cause called on merits. Sanford A. Toyen, Esq. argued for appellant. Richard L. Pinkard, Esq. argued for respondent. Mr. Toyen replied. Cause submitted.

Court recessed at 2:55 p.m. until Tuesday, August 9, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 9, 2005

**D045416        In re Origion on Habeas Corpus**

Petition for rehearing is denied.

**D045630        Bernstein et al. v. San Diego Unified School District et al.**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

**D046744        McKenna v. USAA Insurance Company**

Pursuant to California Rules of Court, rule 8, the appeal filed June 27, 2005, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 4(a) and 5 (a)).

**D044172        People v. Mott**

The judgment on count eight is reversed. The matter is remanded to the trial court for resentencing, to amend the abstract of judgment and forward a copy to the Department of Corrections. In all other aspects the judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D043509        Shaw v. County of San Diego**

The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. Moore

**D045177        People v. Jefferson**

Cause called on merits. Joanna McKim, Esq. argued for appellant. Shari Lawson, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 9:18 a.m. to change panels. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

**D045037        Moore v. County of San Diego et al.**

Cause called on merits. David Edward Wilkinson, Esq. argued for appellant. Kevin G. Kennedy, Deputy Counsel argued for respondent. Mr. Wilkinson replied. Cause submitted.

Court recessed at 9:33 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 9, 2005 (Continued)

**D044728          Self v. Emblem**

Cause called on merits. Thelbert Self, argued for appellant in pro per (telephonic oral argument.) Thor O. Emblem, Esq. argued for respondent. Mr. Self replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald  
Clerk: D. Moore

**D044179          Foster et al. v. 630 "F" Street, LLC et al.**

Cause called on merits. Ann Esther Menasche, Esq. argued for appellant, Foster and etc. Sean D. Schwerdtfeger, Esq. argued for respondent, San Diego Housing. Charles Bird, Esq. argued for respondent, 630 "F" Street, LLC., and etc. Robert C. Martinez, Esq. argued for respondent, City. Cory J. Briggs, Esq. was present in oral argument for appellant, but did not argue. Suzanne R. Varco, Esq. was present in oral argument for respondent, but did not argue. Ms. Menasche replied. Cause submitted.

**D045482          Alexander v. Herstein et al.**

Cause called on merits. Frank E. Noble, Esq. argued for appellant. Katherine Ann Winn, Esq. argued for respondent. Mr. Noble replied. Cause submitted.

**D044896          ASP Properties Group, LP. v. Fard, Inc.**

Cause called on merits. Timothy J. Daley, Esq. argued for appellant. Christian A. M. Curry, Esq. was present in oral argument for respondent. Cause submitted.

**D044941          Wal-Mart Real Estate Business Trust v. City Council of the City of San Marcos**

Cause called on merits. John Gregory McClendon, Esq. argued for appellant, Drake. John C. Nolan, Esq. argued for respondent, Wal-Mart Real Estate. Judith Hartwig, Esq. argued for respondent, City Council City of San Marcos. Edward D. Vogel, Esq. argued for respondent, Brookfield. Mr. McClendon replied. Cause submitted.

Court recessed at 3 p.m. until Wednesday, August 10, 2005 at 9 a.m.

**D046732          In re Abreu on Habeas Corpus**

The petition is denied.

**D046733          In re Jackson on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
August 10, 2005

**D046298 Keith P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

**D046540 Melissa N. v. Superior Court of San Diego County/San Diego County and Human Services Agency**

The attorney for petitioner Melissa N. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D045541 In re Sequoia W., a Juvenile**

The petition for rehearing is denied.

**D044914 People v. McDonald**

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Irion, J.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. Moore

**D043414 Power Partners International, Inc. v. Dominion Energy et al.**

Cause called on merits. Charles A. Bird, Esq. argued for appellant. Scott Oostdyk, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

**D044829 People v. Thompson**

Cause called on merits. Robert E. Boyce, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Mr. Boyce replied.

**D044264 Morrow et al. v. Prewitt**

Cause called on merits. Bob Steele, Esq. argued for appellant. David Parker, Esq. argued for respondent, Gerardis. Justin Lowe, Esq. argued for respondent, Morrow. Cause submitted.

**D045978 In re Amari G., a Juvenile**

Cause called on merits. Neil Trop, Esq. argued for appellant, Marvin G. Julie E. Braden, Esq. argued for appellant, Amari G. Donna Kaiser, Esq. argued for appellant, Suzanne V. Gary Seiser, Deputy County Counsel argued for respondent. Mr. Trop replied. Ms. Braden replied. Ms. Kaiser replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 10, 2005 (Continued)

**D045382        Coshow et al. v. City of Escondido et al.**

Cause called on merits. Norman B. Blumenthal, Esq. argued for appellant. Michael Hogan, Esq. argued for respondent, City. Jennifer McCain, Esq. was present in oral argument with Mr. Hogan, but did not argue. Karen L. Fried, Deputy Attorney General argued for respondent. Mr. Blumenthal replied. Cause submitted.

Court adjourned at 11:05 a.m.

**D043878        People v. Prince**

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D044495        People v. Haithcock**

The trial court's denial of appellant's Marsden motions as well as appellant's sentence are affirmed. Benke, Acting P.J.; We Concur: Haller, J., McIntyre, J.

**D045606        Cruz v. Millan**

The judgment is reversed. Appellant is entitled to her costs on appeal. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

**D044922        People v. Gill**

The court review of the record in this case shows the physical material referred to in the affidavit supporting the search warrant was located in the yard, not in the house. Not developed in the briefs or in the record are issues of whether the yard constituted a curtilage entitled to protection of the Fourth Amendment (see *People v. Hobbs* (1969) 274 Cal.App.2d 402, 406), whether the material in the yard were found without a search in the constitutional sense (see *Lorenzana v. Superior Court* (1973) 9 Cal.3d 626, 629), or whether a warrantless search of the yard was justified by exigent circumstances. (See *People v. Stanley* (1999) 72 Cal.App.4th 1547, 1552; see generally *People v. Camacho* (2000) 23 Cal.4th 824.) The court requests written comment in letter form on these issues and whether it is appropriate to remand the matter to the trial court to make additional findings. Appellant's response is requested by August 19, 2005, and the People's reply by September 1, 2005.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 11, 2005

**D046141        People v. Derby**

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McDonald, J.

**D045798        Progressive Concrete, Inc. v. Parker**

Upon filing a written abandonment, the cross-appeal filed February 14, 2005 by Progressive Concrete, Inc. is dismissed and the remittitur is ordered to issue immediately.

**D046551        In re Ramon R., a Juvenile**

Appellant's motion to dismiss the appeal due to being moot is granted. The notice of appeal, filed May 24, 2005 is dismissed and the remittitur is ordered it issue immediately.

**D045714        In re Gavyn B., a Juvenile**

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., Irion, J.

**D046740        In re Hunter on Habeas Corpus**

The petition is denied.

**D046710        Mills et al. v. Superior Court of San Diego County/U.S. Bank**

The petition is denied.

**D042817        Western Pet Wholesalers, Inc. v. Natura Pet Products, Inc.**

The order of November 15, 2002, confirming the denial of Natura's motion to compel production of profit and loss statements provided by Western to their tax accountant is affirmed. The order granting nonsuit on Western's cause of action against Natura for violation of the Cartwright Act is reversed. The portions of the judgment awarding damages and interest against Natura for breach of contract, breach of the implied covenant of good faith and fair dealing, and "account stated or open book account" are reversed and the matter is remanded for a retrial on the issue of damages under those causes of action. The judgment is otherwise affirmed. The postjudgment order awarding Natura attorney fees is reversed and the matter is remanded for a redetermination of attorney fees in light of the damages awarded against Natura on remand. The parties shall bear their own costs on appeal. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

**D046676        In re Caitlin O. on Habeas Corpus**

The petition is denied.

**D046123        Klopfer Associates, LLC. v. Levition Manufacturing Company, Inc.**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

**D046511        In re Ramirez-Perez on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 12, 2005

**D044829        People v. Thompson**

The judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment and forward a copy to the Department of Corrections. Haller, J.; We Concur: McConnell, P.J., Irion, J.

**D046221        In re Megan M. et al., Juveniles**

The order is affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., Irion, J.

**D046767        A.G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied.

**D045978        In re A. G., a Juvenile**

The order denying Suzanne's section 388 petition and the judgment terminating parental rights are reversed. The juvenile court is directed to hold a new section 388 hearing in which it must fully exercise its own discretion by considering whether the evidence shows a change of circumstances and whether A. G.'s best interests would be served by placing A. G. with an appropriate relative. Irion, J.; We Concur: McConnell, P.J., Haller, J.

**D046750        Jacobsen v. Superior Court of San Diego County/People**

The petition is denied.

**D046310        In re Manuel L., a Juvenile**

The appeal is dismissed. McDonald, Acting P.J.; We Concur: McIntyre, J., Irion, J.

**D046411        In re Diana L. et al., Juveniles**

The appeal is dismissed. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

**D046464        In re Zacariah S., a Juvenile**

The appeal is dismissed. McIntyre, J.; We Concur: Haller, Acting P.J., Irion, J.

**D043058        Milhous et al. v. Franchise Tax Board**

The judgment of the trial court is affirmed. Respondents to recover their costs of appeal. CERTIFIED FOR PUBLICATION Benke, J.; We Concur: McConnell, P.J., Huffman, J.

**D046521        In re Raymond G., a Juvenile**

The appeal is dismissed. Irion, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D045037        Moore v. County of San Diego et al.**

The judgment is affirmed. Defendants are entitled to costs on appeal. McDonald, J.; We Concur: McConnell, P.J., McIntyre, J.

**D046748        Bravo v. Superior Court of San Diego County/People**

The petition is denied.

**D044728        Self v. Emblem**

The judgment is affirmed. Haller, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 12, 2005(continued)

**D046257        In re Lily L., a Juvenile**

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

**D045149        In re the Marriage of Brandwein**

Order affirmed. Benke, Acting P.J.; We Concur: Huffman, J., McIntyre, J.

**D044546        Red Mountain, LLC v. Fallbrook Public Utility District**

Upon written stipulation filed by the parties to the cross-appeal, the cross-appeal filed on June 23, 2004 by Red Mountain, LLC, is dismissed. Each party to bear own costs on appeal.